

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JASON COLEMAN and JESSICA CASEY,
on behalf of the RVNB Holdings, Inc.
Employee Stock Ownership Plan, and on
behalf of a class of all other persons similarly
situated,

Plaintiffs,

v.

NEIL M. BROZEN, ROBERT PETERSON,
JR., VASILIA PETERSON, MIKE PAXTON,
NICK BOURAS, STERLING INVESTMENT
PARTNERS III, L.P., NICOLE PETERSON
2012 IRREVOCABLE TRUST, and BROOKE
PETERSON 2012 IRREVOCABLE TRUST,

Defendants.

Case No. 3:20-cv-01358-E

**MOTION FOR LEAVE TO FILE
PLAINTIFFS' TENTH NOTICE OF SUPPLEMENTAL AUTHORITY
IN FURTHER SUPPORT OF THEIR OPPOSITION TO
DEFENDANTS' MOTION TO COMPEL INDIVIDUAL ARBITRATION**

Plaintiffs Jason Coleman and Jessica Casey ("Plaintiffs") respectfully move for leave to file the attached *Plaintiffs' Tenth Notice of Supplemental Authority* in further support of their opposition (ECF No. 70) to *Defendants' Motion to Compel Individual Arbitration* (ECF No. 66). *See* Exhibit A. Defendants do not consent to this motion.

On June 30, 2023, the U.S. Court of Appeals for the Third Circuit issued *Henry v. Wilmington Trust NA*, No. 21–2801, 2023 WL 4281813 (3d Cir. June 30, 2023), which is just the fourth appellate court decision deciding whether the Supreme Court's effective vindication doctrine invalidates arbitration clauses in ERISA plans that attempt to prospectively waive forms of relief to a plan mandated by ERISA §§ 409(a) and 502(a)(2), 29 U.S.C. §§ 1109(a), 1132(a)(2). *See* Exhibit 1 to *Plaintiffs' Tenth Notice of Supplemental Authority*. The Third

Circuit now joins the Tenth and Seventh Circuits in holding such clauses invalid, thereby rejecting the construction of the FAA and ERISA advocated in a non-precedential decision by the Ninth Circuit. Plaintiffs are mindful that the Court disfavors further motions for leave to file supplemental authority at this time (ECF No. 123). Given the importance of *Henry*—which is on-point, addresses an unusual and complex issue, and conclusively demonstrates the appellate court consensus has tipped against the outlier Ninth Circuit—Plaintiffs respectfully request the Court favor this motion, made in good faith to provide the Court with information necessary to make an informed decision.

Because Plaintiffs believe the opinion in *Henry* will assist the Court in ruling on *Defendants’ Motion to Compel Individual Arbitration*, Plaintiffs respectfully request that the Court grant them leave to file *Plaintiffs’ Tenth Notice of Supplemental Authority*.

Dated: July 6, 2023

Respectfully submitted,

By: /s/ Thomas R. Ajamie

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*Attorneys for Plaintiffs Jason Coleman &
Jessica Casey*

CERTIFICATE OF CONFERENCE

On July 6, 2023, I personally discussed by email the relief requested in Plaintiffs' motion to for leave to file Plaintiffs' tenth notice of supplemental authority with Lindsay Camp, counsel for Defendants Robert Peterson, Jr., Vasilisa Peterson, Mike Paxton, Nick Bouras, Sterling Investment Partners III, L.P., Nicole Petersen 2012 Irrevocable Trust, and Brooke Peterson 2012 Irrevocable Trust; and (2) Peter Allport, counsel for Defendant Neil Brozen. Both stated that the defendants in this case are opposed to the relief sought in this motion.

/s/ John S. "Jack" Edwards, Jr.
John S. "Jack" Edwards, Jr.

CERTIFICATE OF SERVICE

I certify that on July 6, 2023, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

/s/ Thomas R. Ajamie
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